

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT H. MAGOON,

Plaintiff,

v.

STATE OF WASHINGTON, DIVISION OF
CHILD AND FAMILY SERVICES,

Defendant.

NO. CV-11-0318-EFS

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS, ENTERING
JUDGMENT, AND CLOSING FILE**

Before the Court, without oral argument, is Defendant State of Washington, Division of Child and Family Services' November 29, 2011-filed Motion to Dismiss Pursuant to F.R.C.P. 12 and *Younger* Abstention Principles, ECF No. [8](#). On December 16, 2011, the Court entered an Order requiring Defendant to supplement its motion to address *Doe v. Mann*, 415 F.3d 1038 (9th Cir. 2005). ECF No. [13](#). This Order warned Plaintiff Robert Magoon that a failure to file a response to Defendant's motion may be considered consent to dismissal of this lawsuit. *Id.* at 2 (citing ECF Nos. [5](#) & [12](#)). Mr. Magoon failed to file a response by the January 13, 2011 deadline. Accordingly, the Court considers Mr. Magoon to have agreed to this lawsuit's dismissal.

In addition, the Court agrees with Defendant that Mr. Magoon's Complaint, ECF No. [4](#), fails to state a claim upon which relief can be granted under the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1914.

1 Although § 1914 grants jurisdiction to a federal district court as a
2 "court of competent jurisdiction," the Complaint fails to 1) identify what
3 portion of the ICWA, i.e., §§ 1911, 1912, or 1913, Defendant violated, and
4 2) allege facts to support an ICWA violation. The Court would typically
5 grant Mr. Magoon leave to remedy this pleading deficiency. See Fed. R.
6 Civ. P. 15(a) (specifying that, when justice requires, leave to amend is
7 to be freely given). Because Mr. Magoon failed to respond to Defendant's
8 dismissal motion and is considered to have agreed to this lawsuit's
9 dismissal, the Court declines to grant Mr. Magoon leave to amend.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. Defendant's Motion to Dismiss Pursuant to F.R.C.P. 12 and
12 *Younger* Abstention Principles, **ECF No. 8**, is **GRANTED**.

13 2. **Judgment** is to be entered in Defendant's favor without
14 prejudice.

15 3. All pending hearings and deadlines are **STRICKEN**.

16 4. This file shall be **CLOSED**.

17 **IT IS SO ORDERED.** The District Court Executive is directed to enter
18 this Order and provide a copy to Mr. Magoon and counsel.

19 **DATED** this 19th day of January 2012.

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21 s/Edward F. Shea
22 EDWARD F. SHEA
United States District Judge

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